

# EXHIBIT D

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

X

In Re: Chapter 11

Case No.

01-01139 JKF

W.R. Grace & Co., et al.,

Debtors. (Jointly  
Administered)

X

\* \* \* CONFIDENTIAL \* \* \*

— — —  
May 13, 2009  
— — —

DEPOSITION of RICHARD FINKE, held  
at the offices of Kirkland & Ellis, 655  
Fifteenth Street, N.W., Washington, DC,  
commencing at 9:32 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified Court  
Reporter, License No. XI00825, and  
Certified Realtime Reporter

— — —  
MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor  
1635 Market Street  
Philadelphia, PA 19103

2 (Pages 2 to 5)

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1 DEPOSITION SUPPORT INDEX	1 MS. HARDING: I just wanted
2	2 to make a statement on the record
3 Direction to Witness Not To Answer	3 that the debtors have designated
4 Page Line Page Line	4 Mr. Finke to answer certain
5 30 2 37 12	5 appropriate questions related to
6 37 17 39 8	6 certain 30(b)(6) topics.
7 Request For Production of Documents	7 As we've indicated, Mr.
8 Page Line Page Line	8 Finke will be available for seven
9 (None)	9 hours today. We've also designated
10 Stipulations	10 Mr. Hughes and Mr. LaForce to
11 Page Line Page Line	11 answer other 30(b)(6) topic
12 (None)	12 questions. We are hoping and
13 Questions Marked	13 expecting that the parties seeking
14 Page Line Page Line	14 to ask questions have coordinated
15 (None)	15 so that we can end in seven hours
16 - - -	16 and we think it's a reasonable
17	17 expectation.
18	18 The debtors have reviewed
19	19 the deposition of Mr. Lockwood and
20	20 agree, in essence, with Mr.
21	21 Lockwood's answers with respect to
22	22 how the Plan operates and so we
23	23 think and are very hopeful that
24	24 there will not be a need to go
Page 11	Page 13
1 RICHARD FINKE,	1 further than seven hours to get to
2 having been sworn by the Notary	2 the appropriate inquiry as to how
3 Public of the States of New York	3 the Plan operates. So I just
4 and New Jersey, was examined and	4 wanted to get that on the record.
5 testified as follows:	5 MR. BROWN: Okay.
6	6 Actually, that's helpful. Maybe I
7 EXAMINATION BY	7 could follow up with a question for
8 MR. BROWN:	8 Mr. Finke.
9 Q. Good morning, Mr. Finke.	9 Q. Mr. Finke, have you
10 My name is Michael Brown. I represent One	10 reviewed Mr. Lockwood's Rule 30(b)(6)
11 Beacon, Seaton, Geico and Republic for the	11 deposition transcript?
12 objecting insurance companies in the Grace	12 A. Yes, I have.
13 bankruptcy. You've been deposed several	13 Q. Okay. Is there anything
14 times before, correct?	14 that you read in that transcript that you
15 A. Yes, I have.	15 disagreed with?
16 Q. Okay. So we can dispense	16 A. No, nothing of substance.
17 with the formalities of what a	17 Q. Okay. How about anything
18 deposition's all about?	18 not of substance?
19 A. Yes, we can.	19 A. There are a few occasions,
20 Q. Okay.	20 I think, where I either would have worded
21 MS. HARDING: Michael,	21 something differently or where I think Mr.
22 would you mind if I made a quick	22 Lockwood may have been either in error --
23 statement on the record?	23 might have been in error depending on
24 MR. BROWN: Sure.	24 whether he was -- depending on the

5 (Pages 14 to 17)

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<p>1 context. Let me give you one example of      2 that.</p> <p>3 Q. Sure.</p> <p>4 A. He, I think, made a      5 statement at one point where he equated      6 asbestos in place coverage or insurance      7 coverage with the asbestos insurance      8 reimbursement agreements. I believe he      9 said he thought they were the same thing,      10 and perhaps in substance or in concept      11 they are. I'm not an insurance lawyer,      12 but I know that under the Plan      13 definitionally the definition of asbestos      14 (sic) in place insurance coverage      15 specifically excludes asbestos      16 reimbursement agreements from the      17 definition.</p> <p>18 Q. Okay.</p> <p>19 A. Which would suggest they      20 are not the same.</p> <p>21 Q. All right. I'm going to      22 suggest that Miss Alcabes, or one of the      23 people whose issue that is, may want to      1 follow up with you on that point.</p>	<p>1 before you two exhibits marked -- we're      2 using the term Finke 30(b)(6) 1 and Finke      3 30(b)(6) 2. For shorthand during the      4 deposition I'll just refer to them as      5 Finke-1 and Finke-2. Could you identify      6 Finke-1 for me, please?</p> <p>7 A. It is a Notice of      8 Deposition of Debtors Pursuant to Rule      9 30(b)(6) served by One Beacon, Seaton,      10 Geico and Columbia.</p> <p>11 Q. Going forward, it would be      12 more accurate to refer to Columbia as      13 Republic. I know it says Columbia there.      14 The date on here is April 28th, 2009 and      15 the site is Drinker Biddle &amp; Reath's      16 offices but we obviously changed those by      17 agreement after this was scheduled.</p> <p>18 Is it your understanding that      19 you're appearing here today in response to      20 this Rule 30(b)(6) notice?</p> <p>21 A. Yes.</p> <p>22 Q. And there were several      23 others served on you as well?</p> <p>24 A. Correct.</p>
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<p>1 A. Sure.</p> <p>2 Q. But let's pass on that.</p> <p>3 Other than what you've just      4 described, is there anything else in Mr.      5 Lockwood's deposition transcript that the      6 debtors disagreed with?</p> <p>7 A. Nothing that comes to      8 mind.</p> <p>9 MR. BROWN: Okay. Let me      10 have the first exhibit marked, and      11 can we go off the record for a      12 second.</p> <p>13 (Off the record.)</p> <p>14 (Notice of Deposition of      15 Debtors Pursuant to Rule      16 30(b)(6) marked for identification      17 as Exhibit Finke-1.)</p> <p>18 (Document entitled W.R.      19 Grace/Confirmation Hearing 30(b)(6)      20 Deposition Notice marked for      21 identification as Exhibit      22 Finke-2.)</p> <p>23 BY MR. BROWN:</p> <p>24 Q. Mr. Finke, I'm going to put</p>	<p>1 Q. Correct, all right.      2 If you look at what's been marked      3 as Finke-2, can you identify that for      4 me?</p> <p>5 A. It is a chart 18 pages long      6 entitled W.R. Grace/Confirmation Hearing      7 30(b)(6) Deposition Notice Witness      8 Designations.</p> <p>9 Q. Okay. And is it your      10 understanding that this document was      11 prepared by your counsel?</p> <p>12 A. Yes, that's my      13 understanding.</p> <p>14 Q. And have you seen it before      15 today?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And am I correct      18 that it basically lists all the various      19 topics from all the 30(b)(6) notices that      20 were served on Grace and then designates      21 one of, I believe, three individuals to      22 testify about the various topics?</p> <p>23 A. I would agree that it      24 includes all 30(b)(6) notices that have</p>

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<p>1 you now what has been marked as Exhibit 8  2 to this deposition and what is Exhibit 1  3 to the Exhibit Book. First question is:  4 Would you identify the document, please?</p> <p>5 A. Yes. I think Exhibit 8 is  6 the First Amended Joint Plan of  7 Reorganization that was filed by Grace and  8 its co-proponents.</p> <p>9 Q. Okay.</p> <p>10 A. And the date is February --  11 date on the document is February 27,  12 2009.</p> <p>13 Q. Okay. Have you reviewed  14 this document in its entirety?</p> <p>15 A. Yes.</p> <p>16 Q. How many times?</p> <p>17 MS. HARDING: You mean in  18 its entirety how many times?</p> <p>19 MR. BROWN: Well, let's  20 start-up with that question.</p> <p>21 A. Interpreting review as  22 meaning a detailed word-for-word reading  23 of the entire document, I would say  1 once.</p>	<p>1 MS. HARDING: No, it's  2 not.  3 MR. BROWN: Okay. It's  4 just --  5 MS. HARDING: It's just an  6 objection that...  7 A. I'm sure that I do not  8 understand the annex or annexes that I  9 believe relate to tax issues.</p> <p>10 MS. HARDING: I guess --  11 are you asking him in his personal  12 capacity?</p> <p>13 MR. BROWN: I don't think  14 he's here in his personal capacity.  15 I think he's here in his capacity  16 as a designee for W.R. Grace or for  17 the debtors.</p> <p>18 MS. HARDING: Okay. Are  19 you asking him if there's anybody  20 at W.R. Grace that has an  21 understanding of different  22 provisions of the Plan as lawyers  23 and --</p> <p>24 MR. BROWN: I think he's</p>
Page 71	Page 73
<p>1 Q. Okay. And how many times  2 have you partially reviewed the  3 document?</p> <p>4 A. Many times.</p> <p>5 Q. Okay. Do you understand  6 it?</p> <p>7 A. I have an understanding of  8 it. I would not profess to have a  9 complete understanding of it.</p> <p>10 Q. Okay. Are there particular  11 provisions in the Plan that you're quite  12 certain you don't understand?</p> <p>13 MS. HARDING: Object to  14 form and relevance and concern that  15 we're not going to the seven  16 hours -- I mean, if you have a  17 specific question about a specific  18 provision that you don't understand  19 as an insured, then I think you  20 should ask him questions about  21 that. I think...</p> <p>22 MR. BROWN: Is that an  23 instruction not to answer the  24 question?</p>	<p>1 here to testify about the operation  2 of the Plan. I think that was --  3 isn't he? So my question is  4 what --</p> <p>5 MS. HARDING: He's here to  6 answer questions to help you  7 understand the Plan.</p> <p>8 MR. BROWN: Barbara, can  9 we --</p> <p>10 MS. HARDING: So I think if  11 there are questions that you don't  12 understand, I think you should ask  13 him those.</p> <p>14 MR. BROWN: I would like to  15 know whether there are particular  16 provisions in the Plan that the  17 witness can identify that he is not  18 familiar with or that he doesn't  19 understand.</p> <p>20 MS. HARDING: Well, I think  21 he's asked and answered, so...  22 A. Yes, for myself there are  23 provisions that I do not understand, such  24 as the tax annexes. This --</p>

20 (Pages 74 to 77)

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1 MS. HARDING: Which also  
 2 were not designated 30(b)(6) topics  
 3 by any person who --

4 MR. BROWN: Can I ask that  
 5 we just let the witness answer the  
 6 question?

7 MS. HARDING: Well, I think  
 8 if you want to ask him questions  
 9 about topics that were designated  
 10 that you asked him to become  
 11 familiar with, then --

12 MR. BROWN: I didn't ask  
 13 him a question about the tax annex.  
 14 It was in his answer.

15 MS. HARDING: Well, that's  
 16 because you asked him about any  
 17 provision of the Plan. You  
 18 asked -- we tried to prepare the  
 19 witness to answer questions about  
 20 topics that everybody asked about.

21 MR. BROWN: All right.  
 22 I'll ask my question again. If you  
 23 have an objection and you want to  
 1 instruct him not to answer, then do

1 your attention to page 87 of the Plan,  
 2 Section 7.15, and what I would like you to  
 3 do, because I have a series of questions  
 4 about it, is why don't you take a few  
 5 moments to review Section 7.15. In fact,  
 6 if you want to take a break at this  
 7 point --

8 MR. BROWN: Does that make  
 9 sense? Okay.

10 MS. HARDING: Well, I mean,  
 11 how long is it, again?

12 THE WITNESS: Seven  
 13 pages.

14 MS. HARDING: Five-minute  
 15 break?

16 MR. BROWN: That's fine,  
 17 yes.

18 (Recess taken.)

19 BY MR. BROWN:

20 Q. Mr. Finke, we had a short  
 21 break and before that I directed your  
 22 attention to Section 7.15 of the Plan  
 23 entitled Insurance Neutrality. Did you  
 24 have an opportunity to review that section

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1 it and we'll move on.

2 BY MR. BROWN:

3 Q. Mr. Finke, as you sit here  
 4 today looking at the Joint Plan, can you  
 5 identify particular provisions that you do  
 6 not understand?

7 MS. HARDING: Object, asked  
 8 and answered, but answer one more  
 9 time if you'd like.

10 A. In addition to what I've  
 11 already identified, the provision on the  
 12 warrants is not entirely clear to me. And  
 13 if I spent the time to go through the  
 14 document page by page, there may be a few  
 15 other sections that I don't feel very  
 16 comfortable with in terms of the level of  
 17 my understanding.

18 Speaking on behalf of W.R. Grace as  
 19 a whole, there are individuals who  
 20 understand those sections and, taken as a  
 21 whole, I think W.R. Grace does have a good  
 22 understanding of the Plan.

23 Q. Okay. Well, let me take  
 24 your counsel up on her offer and direct

1 during the break?

2 A. Yes.

3 Q. This was not one of the  
 4 sections that you mentioned in your prior  
 5 testimony that you were -- that you did  
 6 not understand. Is it safe to say that  
 7 this is a provision that you do  
 8 understand? And I'm asking that question,  
 9 really, in your capacity as an individual  
 10 and as the designee on this subject for  
 11 the debtors.

12 MS. HARDING: Object to  
 13 form.

14 A. Yes, I believe I understand  
 15 it.

16 Q. Okay. Can you turn to  
 17 Section 11.9 of the Plan, and that's  
 18 entitled Exculpation, and if you'd take a  
 19 moment to review that section.

20 (The witness reviews the document.)

21 A. Okay.

22 Q. Given the language in  
 23 Section 7.15, am I correct that asbestos  
 24 insurance entities are not bound by the

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1 <b>exculpation provision in Section 11.9 of</b> 2 <b>the Plan?</b>	1    It also calls for a legal 2    conclusion. 3    (The witness reviews the document.) 4    A. Okay. I would direct you 5    to Section 7.15(h) which states that "the 6    asbestos insurance entities shall be 7    subject to the releases and injunctions to 8    the extent described in this Plan" so my 9    answer to your question is that I believe 10   any provisions in the Plan that would 11   constitute a release or an injunction, and 12   I would include 11.9 in that language, are 13   binding on the asbestos insurance 14   entities.
10    Q. They are bound? 11    A. Yes. 12    Q. If you go back to 7.15, 13    where is that set forth? 14    MS. HARDING: Object to 15    form. 16    MR. LIESEMER: Same 17    objection. 18    A. Well, of course, there's no 19    provision in Section 7.15 that 20    specifically states that the insurers are 21    bound by Section 11.9. I assume that's 22    not what you're asking, but -- well, 23    literally, I think that is what you asked, 4    so --	15    Q. So your testimony is that 16    7.15(h) includes through its language 17    Section 11.9? 18    A. Yes, that is how I read 19    it. 20    Q. What consideration, if any, 21    are Grace's insureds getting under the 22    Plan in exchange for the exculpation 23    provision in 11.9? 24    MR. LIESEMER: Objection to
1    Q. Yes, that is what I asked. 2    A. -- that's my answer then. 3    Q. So there's nothing in 7.15 4    that says that they're bound by 11.9 but 5    your testimony is that they are in fact 6    bound by 11.9? 7    A. Yes. 8    Q. Are there any other 9    provisions in the Plan that are not 10   specifically spelled out in Section 7.15 11   for which the insurers are bound 12   notwithstanding Section 7.15? 13   MS. HARDING: Objection to 14   form, and I think it misstates his 15   testimony. 16   THE WITNESS: I'm sorry. 17   Could you read back the question? 18   (The reporter reads the 19   pending question.) 20   MS. HARDING: Object to 21   form. I think it's confusing, 22   speculative. I don't see how you 23   can possibly answer that question. 24   But if you can answer it, go ahead.	1    form. 2    MS. HARDING: Objection to 3    form. 4    A. All right. First, your 5    question assumes that the insurance 6    entities would be entitled to some 7    consideration in exchange for being bound 8    by Section 11.9. I don't know that to be 9    the case. I don't know that they're not 10   entitled to it either. 11   But as far as consideration, if one 12   had to justify being bound by Section 11.9 13   on the basis of consideration, I think the 14   answer with respect to asbestos insurance 15   entities would also apply to all parties 16   involved in the Chapter 11, which is that 17   the entities and individuals covered by 18   the exculpation have been active in the 19   business of these Chapter 11 cases, they 20   have had to take positions, make 21   arguments, make decisions, et cetera, that 22   affect one or more parties involved in the 23   Chapter 11 cases and have thereby exposed 24   themselves to potential liability, I

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<p>1 suppose, for their acts or omissions. And      2 the Chapter 11 itself could not proceed to      3 the point of resolution without the      4 efforts of these entities and these      5 individuals. So to the extent -- so there      6 is a -- in order to encourage and      7 facilitate the activities of the parties      8 listed in Section 11.9, it is my      9 understanding that it is common in these      10 types of bankruptcies to provide      11 exculpation of those entities and      12 individuals for their activities, and I'm      13 quoting here from 11.9, "In connection      14 with or arising out of the Chapter 11      15 cases." It is their participation and the      16 fruits of their participation that would      17 constitute consideration.</p> <p>18 Q. I want to circle back to a      19 question that I asked a few questions ago      20 concerning 7.15 and I asked you a question      21 to the effect of other than what's      22 specifically set forth in Section 7.15 are      23 there any other provisions in the Plan or      1 Plan documents that are binding upon</p>	<p>1 A. I could spend the time to      2 look for it if you'd like.      3 Q. No, let's try this a little      4 differently. Look at 7.15(a).      5 A. Okay.      6 Q. It says "Except to the      7 extent provided in this Section 7.15,      8 notwithstanding anything to the contrary      9 in the Confirmation Order, the Plan or any      10 of the Plan documents -- nothing in the      11 Confirmation Order, the Plan or the Plan      12 documents, including any other provision      13 that purports to be preeminent or      14 supervening, shall in any way operate to      15 or have the effect of impairing any      16 asbestos insurance entity's legal,      17 equitable or contractual rights, if any,      18 in any respect." Have I read that      19 correctly?      20 A. I believe so.      21 Q. Okay. And what I'm asking      22 is: Given that broad statement, are there      23 any other provisions in the plan that are      24 not set forth in 7.15 that override the</p>
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<p>1 Grace's insurers, and in answer to that      2 question you referred me to subsection (h)      3 and how 11.9 in the debtor's view was      4 encompassed within the language of (h).      5 So I want to go back to that      6 question and ask: Other than 11.9, is      7 there anything else?</p> <p>8 A. I'm --      9 MS. HARDING: Object to      10 form. I think it's confusing      11 and I'll leave it at that. If you      12 can answer, go ahead.      13 A. I believe there is a more      14 general provision relating to the binding      15 nature of court orders, findings, et      16 cetera. That is what I was looking for      17 initially in response to your answer and      18 then I remembered the provision in 7.15(h)      19 and so I've directed you to that      20 provision. If you want me to spend the      21 time -- I do not know where in that Plan      22 that more general provision is that I have      23 in mind.      24 Q. Well --</p>	<p>1 language in 7.15(a)?      2 MS. HARDING: Object to      3 form.      4 A. Based on the language of      5 7.15(a), and if I'm understanding it as it      6 was intended, it states by its terms that      7 nothing else in the Plan or any of the      8 Plan documents would operate, you know, to      9 impair the -- an asbestos insurance      10 entity's rights.      11 Q. So is your answer no?      12 MS. HARDING: Object, asked      13 and answered, but...      14 A. Based on the language in      15 7.15(a), my answer would be no, subject      16 to -- subject to wanting to review the      17 remainder of the Plan because, as I      18 mentioned, I do have in mind that there is      19 one or more general provisions concerning      20 the applicability or binding nature of      21 court orders, court findings and the like.      22 And while I understand 7.15(a)      23 appears to act in such a way that would      24 make my proviso in my answer irrelevant, I</p>

23 (Pages 86 to 89)

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<p>1 would still feel more comfortable having      2 found and reviewed those other provisions      3 before giving an unequivocal "no".      4 Q. Let's do this because we      5 don't want to waste time. Why don't we --      6 I'm going to continue on. We'll obviously      7 have breaks. And during one of those      8 breaks, why don't you look for whatever      9 provision it is that you -- or provisions      10 that you think you're talking about and      11 then when we return from our break, even      12 if I'm not the questioner, would you bring      13 those one or two sections up to me? That      14 will save us some time.</p> <p>15 A. That's fine.</p> <p>16 Q. All right. I want to focus      17 your attention now on 7.15(b).      18 (The witness reviews the document.)</p> <p>19 A. Okay.</p> <p>20 Q. You see on the second line      21 there rolling over to the third line the      22 phrase "The beneficiaries of the Asbestos      23 PI Trust"? Do you see that?</p> <p>1 A. Yes.</p>	<p>1 know that it is, per se, defined.      2 MS. HARDING: Where is it      3 in the TDP?      4 MR. BROWN: It's in Section      5 5.13.      6 MR. COHN: Is that on page      7 49 of the TDP?      8 MR. BROWN: I don't know      9 the page number.      10 THE WITNESS: Page 49,      11 yes.      12 A. Based on Section 5.13 of      13 the TDP and on the basis that a holder of      14 an indemnified insured TDP claim      15 potentially may have that claim paid by      16 the PI Trust in accordance with Section      17 5.13, I would interpret such a holder to      18 be a beneficiary of the PI Trust.      19 Q. Okay. So let's just take      20 one of my clients, for example. Let's      21 take Seaton Insurance Company. If Seaton      22 Insurance Company has an indemnified      23 insured TDP claim, then Seaton Insurance      24 Company, as I understand 7.15(b), is bound</p>
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<p>1 Q. What do you understand that      2 term to mean?</p> <p>3 MR. LIESEMER: Object to      4 the form.</p> <p>5 Q. What does that term mean?</p> <p>6 A. I understand it to mean      7 holders of asbestos PI claims.</p> <p>8 Q. Okay. And does that      9 include holders of indirect Asbestos PI      10 Trust claims?</p> <p>11 MR. LIESEMER: Object to      12 the form.</p> <p>13 A. Yes.</p> <p>14 Q. And does it include      15 indemnified insurer -- does it -- excuse      16 me.</p> <p>17 Does that term include the holders      18 of indemnified insurer TDP claims?</p> <p>19 MR. LIESEMER: Object to      20 the form.</p> <p>21 A. Is that a defined term?</p> <p>22 Q. Good question. It is a      23 term that appears in Section 5.13 of the      24 Trust Distribution Procedures. I don't</p>	<p>1 by the Plan, the Plan documents and the      2 confirmation order?</p> <p>3 MR. LIESEMER: Object to      4 the form.</p> <p>5 MS. HARDING: Object to the      6 form.</p> <p>7 Q. Do I have that correct?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Okay. And is it bound by      10 the Plan, Plan documents and confirmation      11 order insofar as it may also be listed as      12 being a partially settled insurer?</p> <p>13 MS. HARDING: Object to the      14 form. And are you referring to      15 7.15(b)?</p> <p>16 MR. BROWN: Yes.</p> <p>17 MS. HARDING: Back to      18 7.15(b) when you asked that      19 question?</p> <p>20 MR. BROWN: Yes.</p> <p>21 A. I'm not sure I see the      22 connection between Section 5.13 of the TDP      23 and your question, if there is any.      24 The -- I believe the answer is they are</p>

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<p>1 bound to the same extent any asbestos      2 insurance entity is bound under the      3 Plan.</p> <p>4 Q. Mr. Finke, you understand,      5 don't you, that -- well, let's not do it      6 that way. Let's go to -- I think it's the      7 asbestos insurance transfer agreement.</p> <p>8 MS. HARDING: Is that one      9 of our exhibits?</p> <p>10 MR. BROWN: No, I'm sorry,      11 it's not that. It's Exhibit 5.</p> <p>12 Q. Do you have Exhibit 5?</p> <p>13 A. Retained causes of action?</p> <p>14 Q. No. This is Exhibit 5 to      15 the Exhibit Book.</p> <p>16 A. To the Exhibit Book.</p> <p>17 MS. HARDING: I have a      18 copy. It's not his but you can      19 look at it if you'd like.</p> <p>20 MR. COHN: What is the      21 document?</p> <p>22 MS. BAER: It's Exhibit 5      23 to the Exhibit Book, Schedule of      24 Settled Asbestos Insurers.</p>	<p>1 there are indemnity claims against the      2 debtor and to the extent that those are      3 asbestos-related, those fit within the      4 defined term "indemnified insured TDP      5 claims", correct?</p> <p>6 MS. HARDING: Object to      7 form.</p> <p>8 MR. LIESEMER: Join.</p> <p>9 MS. HARDING: Are you      10 looking for 7.15?</p> <p>11 MS. ALCABES: 5.13.</p> <p>12 MS. HARDING: There you go.</p> <p>13 A. No, I don't agree.</p> <p>14 MR. BROWN: Could you read      15 back the last question?      16 (The reporter reads the      17 requested portion.)</p> <p>18 A. No, I don't agree. My      19 understanding of Section 5.13 is this      20 provision would take effect only upon      21 confirmation of the Plan since the      22 definition indicates, or requires, that      23 the indemnified insuror TDP claim is      24 channeled to the PI Trust, which it can't</p>
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<p>1 (Exhibit 5 to Exhibit Book,      2 Schedule of Settled Asbestos      3 Insurers Entitled to 524(g)      4 Protection marked for      5 identification as Exhibit      6 Finke-9.)</p> <p>7 Q. What I'd like you, Mr.      8 Finke -- first of all, why don't you      9 identify what we've just marked as Exhibit      10 9?</p> <p>11 A. Okay. Finke Exhibit 9 is      12 Exhibit 5 to the Exhibit Book. It is      13 entitled Schedule of Settled Asbestos      14 Insurers Entitled to 524(g) Protection.</p> <p>15 Q. Now, you understand, don't      16 you, that at least some of the insurance      17 companies that are listed on this schedule      18 have indemnity claims against the      19 debtors?</p> <p>20 MR. LIESEMER: Object to      21 the form of the question.</p> <p>22 A. Yes, I believe that's      23 correct.</p> <p>24 Q. And to the extent that</p>	<p>1 be at this point.</p> <p>2 Q. All these questions are in      3 the context of the Plan being confirmed.</p> <p>4 A. Well, then I don't --</p> <p>5 Q. Let me back up. I think      6 the record's kind of muddled at this      7 point.</p> <p>8 A. Okay.</p> <p>9 Q. Why don't you -- if you      10 look at the schedule of settled asbestos      11 insurance companies, I believe you'd      12 testified -- that's Exhibit 9 -- I believe      13 you'd testified that some of the companies      14 that are listed on there have contractual      15 indemnity claims against the debtors.</p> <p>16 A. That was under the      17 assumption we were talking about current      18 claims. I didn't realize you had -- that      19 your questions were all in the context of      20 the assumption of a confirmed plan.</p> <p>21 Q. All right. If you look at      22 the schedule, you understand that the      23 insureds that are listed on here have      24 settlement agreements with the debtors,</p>

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1      correct? 2      A. Yes. 3      Q. And you also understand 4      that certain of those settlement 5      agreements have contractual indemnity 6      provisions in them, correct? 7      A. Yes. 8      Q. And I believe you testified 9      that those contractual indemnity 10     provisions are under the Plan to be 11     treated as indemnified insured TDP claims 12     under Section 5.13 of the TDP. Is that 13     correct? 14     A. No, no, that certainly 15     wasn't my intent. 16     Q. Okay. How are they being 17     treated under the Plan? 18     A. As indirect PI Trust 19     claims. 20     Q. Okay. Do you understand 21     indemnified insured TDP claims to be a 22     class of indirect PI Trust claims? 23     A. It appears to me to be 1      that, that they are the same. Or at least	1      Q. Let's get back to the 2      insurance neutrality provision then, which 3      is 7.15. 4      A. Okay. 5      Q. Getting back to 7.15(b), 6      this line of questioning talked with or 7      started with the reference to the term, 8      the phrase, "the beneficiaries of the 9      Asbestos PI Trust". 10     A. Uh-huh. 11     Q. I'm a little confused by 12     your testimony at this point. If you are 13     the holder of an indemnified insurer TDP 14     claim post-confirmation, are you a 15     beneficiary of the Asbestos PI Trust? 16     MR. LIESEMER: Object to 17     the form of the question. 18     MS. HARDING: Object to 19     form. 20     A. Assuming for the sake of 21     argument such a claim could arise, my 22     understanding would be yes. 23     MR. BROWN: All right. I'm 24     going to shift gears. We'll mark	1      another document. The document I'm 2      about to mark is one of our 3      settlement agreements so we can 4      mark this portion of the deposition 5      subject to the protective order but 6      what I would like to do with this 7      one, like we did with Mr. Posner, 8      to the extent that no one objects 9      to the extent that we, my clients, 10     would like to use this portion of 11     the testimony without having it 12     under seal, we would be able to do 13     so without asking all parties to 14     agree. Is that fair? 15     MS. HARDING: That's up to 16     you. 17     MR. BROWN: All right. 18     MR. LEWIS: Did you say 19     Mr. Posner? 20     MR. BROWN: Yes. 21     MR. LEWIS: Okay. 22     (Settlement Agreement 23     Bates stamped OB 1 through 33 24     marked for identification as

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1      Exhibit Finke-10.)	1      the document before.
2      MS. HARDING: And as I	2      A. Based on the --
3      understand it, all parties are -- I	3      MS. HARDING: To the extent
4      think all parties in this room have	4      that you know.
5      agreed to the protective order.	5      THE WITNESS: Sorry.
6      MR. BROWN: I don't know.	6      A. Based on the signature
7      Is Mr. Speights on the line?	7      page, the parties are W.R. Grace & Co.,
8      Mr. Speights?	8      W.R. Grace & Co.-Conn., Commercial Union
9      MS. BAER: We can put on	9      Insurance Company as successor in interest
10     the record that Mr. Speights never	10     to Employers Commercial Union Insurance
11     objected to the provisions of the	11     Company of America and Employers
12     protective order.	12     Commercial Union Insurance Company and
13     MR. BROWN: Okay.	13     American Employers Insurance Company.
14     Q. Mr. Finke, you have before	14     Q. Okay. And would you agree
15     you a document which has been marked	15     with me that the parties that executed
16     Finke-10 and I'd like you to take a few	16     this document appear, at least from what
17     moments to review it and then tell me	17     is on the document, to have signed it in
18     whether you have ever seen the document	18     or around May of 1993?
19     before.	19     A. Yes.
20     A. No, I have not.	20     Q. Okay. If you look at the
21     Q. Okay. Can you turn to	21     signature block for Mr. Beber, he's
22     pages 30 and 31?	22     indicated as having signed this document
23     MR. LIESEMER: Are you	23     on behalf of W.R. Grace & Co. Do you see
1     referring to the Bates numbering?	24     that?
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1      MR. BROWN: Actually, it's	1      MS. HARDING: Which?
2      the same on these, on this	2      A. Yes.
3      particular document, but OB 30 and	3      MS. HARDING: Wait a
4      31.	4      minute. What page? 30 or 31?
5      Q. Do you recognize any of the	5      MR. BROWN: OB 30.
6      signatures that appear on either of those	6      MS. HARDING: Right, I just
7      pages?	7      wanted to make it clear that he
8      MS. HARDING: You mean the	8      appears to be in two different
9      names of the people that have	9      places.
10     signed or the actual signatures?	10     MR. BROWN: I'm focused on
11     MR. BROWN: The latter.	11     the first signature on OB 30.
12     A. The signature of Robert H.	12     MS. HARDING: Page 30, all
13     Beber appears to be his signature, not --	13     right.
14     I can't say that conclusively, but --	14     Q. The company that was called
15     Q. Do you recognize --	15     W.R. Grace & Company in May of 1993 has a
16     A. -- it looks familiar.	16     different name today, doesn't it?
17     Q. Do you recognize the	17     A. I believe that's correct.
18     signature of Mr. Posner?	18     Q. Okay. And the name is
19     A. I don't.	19     Fresenius Medical Care Holdings, Inc., is
20     Q. Who are the parties to the	20     it not?
21     agreement?	21     A. I don't know the answer off
22     MS. HARDING: Object to	22     the top of my head.
23     form and object to the extent that	23     Q. Okay. Let me direct you to
24     he's testified that he's never seen	24     a few things in the Plan. I'd like you to